

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ABDUL BASIT JAHANGIR,) Case No.: 1:23-cv-0219 JLT HBK (HC)
Petitioner,)
v.) ORDER ADOPTING THE FINDINGS AND
WARDEN,) RECOMMENDATIONS, DISMISSING
Respondent.) PETITION FOR WRIT OF HABEAS CORPUS,
) AND DIRECTING CLERK OF COURT TO
) CLOSE CASE
) (Docs. 1, 11)
)

The assigned magistrate judge reviewed the petition in this case and found it failed to comply with Local Rule 131(b) and Rule 2 of the Rules Governing Section 2254 Cases, because it was not signed under penalty of perjury. The magistrate judge granted Petitioner the opportunity to cure this deficiency and directed Petitioner to respond within 21 days. (Doc. 2.) Petitioner failed to respond.

The magistrate judge then found that Petitioner failed to prosecute the action and failed to comply with the Court's order, and recommended the petition be dismissed. (Doc. 11.) The Court served the Findings and Recommendations on all parties and advised them that any objections were to be filed within 14 days after service. (*Id.* at 4.) The Court advised them also that "failure to file objections within the specified time may result in the waiver of rights on appeal." (*Id.* at 5, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014); *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).) Petitioner has not filed objections, and the

1 deadline to do so has expired. According to 28 U.S.C. § 636 (b)(1)(C), the Court conducted a *de*
2 *novo* review of the case. Having carefully reviewed the entire file, the Court concludes that the
3 magistrate judge's Findings and Recommendations are supported by the record and proper
4 analysis.

5 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
6 district court's denial of his petition, and an appeal is only allowed in certain circumstances.
7 *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. If a court denies a habeas
8 petition on the merits, the court may only issue a certificate of appealability “if jurists of reason
9 could disagree with the district court’s resolution of [the petitioner’s] constitutional claims or that
10 jurists could conclude the issues presented are adequate to deserve encouragement to proceed
11 further.” *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Though the
12 petitioner is not required to prove the merits of his case, he must demonstrate “something more
13 than the absence of frivolity or the existence of mere good faith on his . . . part.” *Miller-El*, 537
14 U.S. at 338.

15 The Court finds that reasonable jurists would not find the determination that the petition
16 should be dismissed debatable or wrong, or that the issues presented are deserving of
17 encouragement to proceed further. Petitioner has not made the required substantial showing of the
18 denial of a constitutional right. Therefore, the Court declines to issue a certificate of appealability.

19 Based upon the foregoing, the Court **ORDERS**:

- 20 1. The Findings and Recommendations issued on April 19, 2023 (Doc. 11), are
21 **ADOPTED** in full.
- 22 2. The petition for writ of habeas corpus (Doc. 1) is **DISMISSED** without prejudice.
- 23 3. The Court declines to issue a certificate of appealability.
- 24 4. The Clerk of the Court is to terminate any pending deadlines/motions and **CLOSE**
25 the case.

26 IT IS SO ORDERED.

27 Dated: May 18, 2023


UNITED STATES DISTRICT JUDGE